

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re : Case No. 03-61982  
Thickstun Brothers Equipment Co., Inc., : Chapter 11  
Debtor. : (Judge Caldwell)

**ORDER DENYING DEBTOR'S MOTION PURSUANT TO  
11 U.S.C. § 1142, 11 U.S.C. § 105 AND ITS CONFIRMED PLAN  
REQUESTING AN INTERPRETATION AND CLARIFICATION  
OF TERMS AND CONDITIONS OF PLAN**

On April 14, 2005, the above-captioned Motion was filed on behalf of the Debtor. In response, a Memorandum was filed on behalf of Encompass Service Corporation ("Encompass") on May 4, 2005. A hearing was conducted on June 22 and 30, 2005. Based upon the evidence, stipulations and statements of counsel, the Court has concluded that it does not have jurisdiction to provide the requested relief for reasons that follow.

The dispute between the Debtor and Encompass emanates from a construction contract that resulted in litigation that was commenced and remains pending before the Jefferson County, Kentucky, Circuit Court and the United States District Court in Columbus, Ohio. Under the terms of the Debtor's plan that was confirmed on June 17, 2004, the Debtor was required to file any objections to claims sixty days after the effective date of the plan. There is no dispute that the Debtor failed to file a timely objection to the claim of Encompass that was filed on September 30, 2003, approximately a year prior to confirmation. Also under the terms of the confirmed plan, this Court retained jurisdiction to, "... determine the classification, validity and amount of, or to allow or disallow, any and all Claims herein to which any party to these proceedings, including the Debtor, objects . . ." (emphasis supplied).

In the instant Motion, the Debtor seeks a declaration pursuant to sections 105 and 1142 of the United States Bankruptcy Code (“Code”) that its failure to file a timely objection to the Encompass claim, under the terms of its confirmed plan, is not entitled to preclusive effect in the cause of action pending in Kentucky. This request is based upon the fact that the Debtor asserts that it more than adequately put Encompass on notice in the plan and disclosure statement that it intended to pursue the dispute as a source of funding of the confirmed plan. It is this Court’s conclusion, however, that the resolution of this issue exceeds the post confirmation jurisdiction retained under the terms of the confirmed plan detailed above. Section 1141 of the Code expressly mandates that, “. . . the provisions of a confirmed plan bind the debtor . . . and any creditor . . .” Accordingly, since there was no objection filed by the Debtor within the time specified by its plan, this Court has no jurisdiction to provide the requested relief. Based upon this determination, this Court has determined that it would serve no purpose to discuss the complex procedural history between the parties. Additionally, issues such as the availability and impact of a post confirmation modification or commencement of a new chapter 11 proceeding that were raised during oral argument are not properly before the Court.

Accordingly, Debtor’s Motion Pursuant to 11 U.S.C. § 1142, 11 U.S.C. § 105 and Its Confirmed Plan Requesting an Interpretation and Clarification of Terms and Conditions of Plan is **DENIED** for lack of jurisdiction.

**IT IS SO ORDERED.**

Date:\_\_\_\_\_

\_\_\_\_\_  
Charles M. Caldwell  
United States Bankruptcy Judge

Copies:

Thickstun Brothers Equipment Co., Inc., 841 Alton Avenue, Columbus, Ohio 43219

Charles F. Merz, 11414 Old Shelbyville Road #102, Louisville, Kentucky 40243

Grant A. Wolfe, Esq. (electronic service)

Matthew J. Fisher, Esq. (electronic service)

Michael D. Bornstein, Esq. (electronic service)

Richard T. Ricketts, Esq. (electronic service)

Assistant United States Trustee (electronic service)